

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Parts 1 and 22 of the	)	WT Docket No. 12-40
Commission's Rules with Regard to the Cellular	)	
Service, Including Changes in Licensing of	)	RM No. 11510
Unserved Area	)	
	)	
Amendment of the Commission's Rules with	)	
Regard to Relocation of Part 24 to Part 27	)	
	)	
Interim Restrictions and Procedures for Cellular	)	
Service Applications	)	

**REPLY COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®, THE NATIONAL  
TELECOMMUNICATIONS COOPERATIVE ASSOCIATION, AND THE RURAL  
TELECOMMUNICATIONS GROUP, INC.**

CTIA – The Wireless Association® (“CTIA”),<sup>1</sup> the National Telecommunications Cooperative Association (“NTCA”),<sup>2</sup> and the Rural Telecommunications Group, Inc.<sup>3</sup> (“RTG” and collectively with CTIA and NTCA, the “Joint Associations”) hereby submit these joint Reply Comments in response to the Commission’s Notice of Proposed Rulemaking (“NPRM”) seeking comment on a proposed revision of the licensing model for the Cellular Radiotelephone

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<sup>1</sup> CTIA is the international association of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, Advanced Wireless Service, 700 MHz, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products.

<sup>2</sup> All of NTCA’s members are rural telephone companies as that term is defined in the Communications Act of 1934, as amended. NTCA’s members are full service telecommunications companies and provide a wide array of telecommunications services, including 800 MHz Cellular Radiotelephone Service, to their rural communities.

<sup>3</sup> Rural Telecommunications Group, Inc. (“RTG”) is a Section 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies to serve rural consumers and those consumers traveling to rural America. RTG’s members are small businesses serving or seeking to serve secondary, tertiary, and rural markets. RTG’s members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies.

Service (“Cellular”) from a site-based model to a geographic-based approach.<sup>4</sup> In its initial Comments, CTIA proposed a compromise framework for the market area licensing of Cellular service that differed from that set forth by the Commission in the NPRM. The Joint Associations strongly support the CTIA compromise proposal as striking the appropriate balance between simplifying cellular licensing, preserving incumbent licensee rights, and serving the public interest. Conversely, the record shows overwhelming opposition to the Commission’s proposed overlay auction framework, and the Joint Associations urge the Commission to reject it. The Joint Associations’ Cellular licensee members have devoted as many as thirty years to providing innovative wireless service to the public, all while being subjected to highly burdensome regulatory requirements not shared by competitive services in other bands. The Joint Associations urge the Commission to remove these burdens by transitioning Cellular licenses to market-based licenses, as described in the compromise framework summarized below.

**I. THE COMMISSION SHOULD ADOPT CTIA’S COMPROMISE PROPOSAL FOR GEOGRAPHIC AREA-BASED LICENSING FOR CELLULAR SERVICES.**

In its opening Comments, CTIA proposed that instead of conducting an overlay auction to convert site-based Cellular licenses to market-area licenses, the Commission should deem that all existing Cellular licenses are market-based licenses, with the geographic boundaries of each license being determined by the licensee’s currently-authorized CGSA.<sup>5</sup> Under this proposal, the current coverage provided by Cellular licensees will be converted to a “geographic area” license, with full flexibility to make changes that do not extend or contract the existing coverage footprint. This approach will greatly simplify Cellular licensing while also accommodating the

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<sup>4</sup> *Amendment of Parts 1 and 22 of the Commission’s Rules with Regard to the Cellular Service, Including Changes in Licensing of Unserved Area*, Notice of Proposed Rulemaking and Order, FCC 12-20 (Feb. 15, 2012) (“NPRM”).

<sup>5</sup> Comments of CTIA – The Wireless Association®, WT Docket No. 12-40 (May 15, 2012) (“CTIA Comments”).

complexities of particular markets. In particular, this proposal would most efficiently address markets that have been partitioned or where neighboring Cellular licensees have negotiated an extension agreement that results in a licensee in one CMA having a licensed footprint that extends into an adjacent CMA. Under this framework, a party wishing to obtain a license for an unserved area or to extend their current license to encompass an unserved area may do so through the Commission's Phase II application process. To the extent there is mutual exclusivity for an unserved area license, the Commission has competitive bidding procedures in place to address such situations.

The Joint Associations, together with their members, strongly support the CTIA proposal as it strikes the proper balance between reforming the current licensing regime and protecting existing licensee rights. Cellular licensees will experience a drastic reduction in the number of filings they need to make with the Commission, the Commission's licensing databases will be more clear and accurate, the potential for entry by a new unserved area licensee will remain, and the pitfalls associated with overlay auctions will be avoided. Further, adoption of this proposal is consistent with the Administration's calls for efficiency in federal regulation.<sup>6</sup> Therefore, as discussed further below, the widespread support for the CTIA proposal among Cellular licensees obviates the need for an overlay auction mechanism such as that suggested by the Commission in the *NPRM*.

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<sup>6</sup> President Barack Obama, Exec. Order 13563, FR 3821 (2011); President Barack Obama, Exec. Order 13579, FR 41857 (2011) (stating that regulations should take into account both costs and benefits and be tailored to have the least burden on society). *See also, e.g.* Press Release, FCC, Statement from Chairman Genachowski on the Executive Order on Regulatory Reform and Independent Agencies (July 11, 2011), *available at* [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-308340A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-308340A1.pdf); Press Release, FCC, FCC Chairman Genachowski Continues Regulatory Reform to Ease Burden on Businesses, (Aug. 23, 2011), *available at* [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db0822/DOC-309224A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0822/DOC-309224A1.pdf).

## **II. THE RECORD SHOWS OVERWHELMING OPPOSITION TO OVERLAY AUCTIONS.**

In their opening comments, the Joint Associations each strongly opposed the Commission's "overlay auction" proposal. In particular, NTCA noted that overlay auctions would be inappropriate because they are "administratively expensive for both the Commission and the participants, and auctions are only appropriate when there are competing, mutually exclusive applications,"<sup>7</sup> which is not the case here. NTCA observed that the areas the Commission seeks to auction are ones where "presumably, only an incumbent license holder serving the CMA would be interested in obtaining the license."<sup>8</sup> That said, RTG cautioned the Commission that if speculators or those not already serving a CMA seek an overlay license, such action could cause great difficulty to incumbent licensees.<sup>9</sup> Having reached similar conclusions, CTIA warned the Commission that in an overlay auction scenario, "[a]t 'best,' an incumbent licensee would be paying for the privilege of maintaining the status quo. At worst, however, the incumbent would find its existing rights substantially infringed by the presence of a third party overlay licensee."<sup>10</sup>

The Joint Associations were not alone in their opposition to overlay auctions – the overwhelming majority of participants in this proceeding strongly objected to this method of

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<sup>7</sup> Comments of the National Telecommunications Cooperative Association, WT Docket No. 12-40, at 3 (May 15, 2012) ("NTCA Comments").

<sup>8</sup> NTCA Comments at 3. *See also* Comments of the Rural Telecommunications Group, Inc., WT Docket No. 12-40, at 4 (May 15, 2012) ("RTG Comments") ("It appears to RTG as if the proposed auction conversion process is a method for the FCC to raise money for spectrum that is only of real value to the incumbent licensees.").

<sup>9</sup> RTG Comments at 3-4 (arguing that the Commission's approach "is misguided and could cause [RTG's] members difficulty if speculators or those not already serving CMA Blocks being auctioned were to bid and be successful.").

<sup>10</sup> CTIA Comments at 9.

converting Cellular licenses to geographic area licenses. As an initial matter, commenters noted that the Commission's overlay auction proposal is impractical and counterproductive. The Commission itself recognized that "most Cellular Service markets are almost completely licensed, with only limited unlicensed Cellular Service area remaining."<sup>11</sup> As a result, the party purchasing the overlay license at auction would only be acquiring initial licensing rights to very small areas. In many markets, those areas that remain unserved are so because of technical or legal impediments to establishing service.<sup>12</sup> In light of the fact that an overlay auction would not increase coverage, nor would it make challenging unserved areas any easier to serve, the Commission should instead rely on its existing unserved area application process.<sup>13</sup>

Not only would overlay licensing be unnecessary in substantially licensed markets, but it also has the potential to wreak havoc in markets where the licensing environment is more complex. As U.S. Cellular correctly observed, the overlay license system "fails to deal adequately with the actual problem that many cellular markets already have more than one license on the same frequency block and others have more than two. Adding an 'overlay' licensee to this mix simply will not work and will prove to be a source of endless and needless trouble."<sup>14</sup> CTIA raised similar concerns in its comments.<sup>15</sup> Given the realities of the existing

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<sup>11</sup> *NPRM* at ¶ 1.

<sup>12</sup> *See* Comments of AT&T, WT Docket No. 12-40, at 7-11 (May 15, 2012) ("AT&T Comments") (highlighting markets with unserved areas that are too small to serve with independent systems, are composed primarily of National Forest or National Park land, or government property).

<sup>13</sup> *See, e.g.,* AT&T Comments at 6 ("Clearly 'overlay' licenses in fully-served CMAs would do nothing to expand coverage, and in the CMAs in which some unserved area remains, the existing unserved area application process appears to have resulted in the steady expansion of coverage. Simply put, there is no need to hold auctions.").

<sup>14</sup> Comments of United States Cellular Corporation, WT Docket No. 12-40, at 8-9 (May 15, 2012) ("U.S. Cellular Comments").

<sup>15</sup> CTIA Comments at 6-7.

Cellular licensing environment, the Commission's overlay auction proposal is impractical and will cause considerable difficulties for licensees.

The record also shows that overlay licensing will significantly infringe upon licensee rights and create considerable uncertainty for incumbent Cellular licensees. The Commission has essentially proposed to "strip licensees of a portion of their license rights in order to auction off duplicative 'overlay' licenses."<sup>16</sup> As Nsight Spectrum and Thumb Cellular have noted, the *NPRM* is extremely unclear on how the respective interference protections of the incumbent licensee and the overlay licensee will operate in practice.<sup>17</sup> Finally, the record shows that potential increased interference is not the only erosion of licensee rights that would take place under overlay auctions: overlay licensing would eliminate the potential for service area boundary extensions<sup>18</sup> and could create challenges for licensees in the context of their dealings with other government agencies.<sup>19</sup>

Finally, commenters have challenged the Commission's authority to conduct an overlay auction. As Nsight Spectrum and Thumb Cellular argued, "auctions are not required for system modification applications and there is nothing in the [Communications Act] which requires the Commission to create new markets in established industries for the purpose of trying to create

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<sup>16</sup> AT&T Comments at 6.

<sup>17</sup> Nsight Comments at 2-4; Thumb Cellular Comments at 2-4.

<sup>18</sup> AT&T Comments at 13.

<sup>19</sup> U.S. Cellular Comments at n. 18 ("We would also note that creating an 'overlay' license which may not be held by the incumbent licensee, might cast doubt on incumbent cellular licenses' ability to assert that they hold valid authority from the FCC for a given CMA in various filings with government agencies.").

mutually exclusive applications.”<sup>20</sup> Indeed, several parties questioned the appropriateness of an auction in this context: U.S. Cellular argued that “necessitating this type of ‘defensive’ bidding would not be a valid use of the federal government’s auction authority” and that the Commission’s proposals are appropriate when initial licenses are being auctioned, not when markets are already being served by the spectrum in question.<sup>21</sup> Further, both AT&T and U.S. Cellular challenged the Commission’s proposal as a means of retroactively auctioning spectrum already brought to market.<sup>22</sup>

In sum, the Cellular licensee participants in this proceeding agree that overlay auctions would be “unnecessary, unworkable and contrary to the public interest.”<sup>23</sup> The Joint Associations agree, and urge the Commission to abandon overlay auctions and instead adopt the CTIA proposal.

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<sup>20</sup> Nsight Comments at n. 8; Thumb Cellular Comments at n. 8. *See also* AT&T Comments at 15 (“However, its overlay auction proposal is designed to provoke, rather than avoid, mutually exclusive applications for the purpose of holding auctions.”).

<sup>21</sup> U.S. Cellular Comments at 8 (“Under 309(i)(1) of the communications Act, the FCC has authority to license spectrum through competitive bidding whenever it accepts mutually exclusive applications for ‘initial’ licenses or permits’ (emphasis added). However, the overlay licenses would not be, in any but the most nominal sense, ‘initial’ licenses. To put it simply, an auction for new licenses is not appropriate when markets are already being served.”) (emphasis in original).

<sup>22</sup> AT&T Comments at 7 (“Indeed, such overlay auctions would be unlawful, as the issuance of duplicative licenses in fully deployed spectrum would appear to be designed primarily to generate auction revenue, which is prohibited under Section 309.”); U.S. Cellular Comments at 8 (“However, the FCC’s consideration of those matters, which would be entirely appropriate in the context of auctions for newly allocated spectrum, ignores the inconvenient fact that cellular markets are already licensed and were built out in the eighties and nineties, pursuant to then existing FCC regulations. While the Commission may well wish that it had possessed auction authority in the eighties, it cannot now ignore the fact that cellular networks are fully constructed and that therefore there is nothing left of any value to auction.”).

<sup>23</sup> U.S. Cellular Comments at 1.

### III. CONCLUSION

For the foregoing reasons, the Joint Associations urge the Commission to adopt CTIA's proposed reforms to Cellular licensing, as they will both simplify licensing and preserve licensee rights. Conversely, overlay auctions would undermine licensee rights and the public interest with few benefits, and the Commission should heed the overwhelming opposition to overlay auctions and abandon this proposal.

Respectfully submitted,

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Dated: June 14, 2012